

REMARKS

Claim 25 has been amended. Amended claim 25 finds basis in the specification at paragraph [0040] for example. No new matter is added.

Applicants respectfully acknowledge the allowance of claim 24.

The rejection of claim 25 under 35 USC 112, first paragraph as failing to comply with the written description requirement is respectfully traversed.

The Office states that claim 25 contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The Office then states that claim 25 part *b* recites the phrase "wherein said cassette includes a fluorescent protein and is operatively linked to a *Drosophila melanogaster* polyubiquitin gene...". The Office further states that claim 25 part *c* recites "polyubiquitin gene operatively linked to said marker cassette." and therefore is drawn to the cassette or cassette including a fluorescent protein "operatively linked" to the polyubiquitin gene; and this embodiment constitutes new matter because the embodiment does not find

support in the specification. The Office concluded that indeed, as stated above, claim 24 and the specification teach that the cassette is operatively linked to a specific noncoding region of the *D. melanogaster* polyubiquitin gene-i.e., polyubiquitin promoter (e.g. Specification, p. 14 paragraph 40).

Applicants respectfully submit that newly amended claim 25 no longer contains language that the Office would consider new matter. Claim 25b now recites "wherein said cassette includes a fluorescent protein gene operatively linked to a *Drosophila melanogaster* polyubiquitin promoter,. Claim 25c now recites a *Drosophila melanogaster* polyubiquitin promoter operatively linked to said Fluorescent protein gene. These amendments find basis in claim 24 and paragraph 40 of the present specification. Withdrawal of the instant rejection is respectfully requested.

It is believed that all of the claims are in condition for allowance. Accordingly, it is respectfully requested that the instant application be allowed to issue. If any issues remain to be resolved, the Examiner is invited to telephone the undersigned at the number below.

In the event this paper is deemed not timely filed, the undersigned hereby petitions for an appropriate extension of time. Please charge any fees, which may be required by this

paper or at any time during prosecution of the instant application, or credit any overpayment, to deposit account 50-2134.

Respectfully submitted,

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DATE

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CERTIFICATE OF FILING VIA FACSIMILE

The undersigned hereby certifies that the attached **AMENDMENT** was this day, September 1, 2005, filed in the United States Patent and Trademark Office via facsimile to facsimile number 571-273-8300. Total pages: 7

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